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[T.D. 8654, 61 FR 268, Jan. 4, 1996]

§ 1.6050P-1 Information reporting for discharges of indebtedness by certain financial entities.

(a) *Reporting requirement*—(1) *In general.* Except as provided in paragraph (d) of this section, any applicable financial entity (as defined in section 6050P(c)(1)) that discharges an indebtedness of any person (within the meaning of section 7701(a)(1)) of at least \$600 during a calendar year must file an information return on Form 1099-C with the Internal Revenue Service. Solely for purposes of the reporting requirements of section 6050P and this section, a discharge of indebtedness is deemed to have occurred, except as provided in paragraph (b)(3) of this section, if and only if there has occurred an identifiable event described in paragraph (b)(2)

of this section, whether or not an actual discharge of indebtedness has occurred on or before the date on which the identifiable event has occurred. The return must include the following information—

(i) The name, address, and taxpayer identification number (TIN), as defined in section 7701(a)(41), of each person for which there was an identifiable event during the calendar year;

(ii) The date on which the identifiable event occurred, as described in paragraph (b) of this section;

(iii) The amount of indebtedness discharged, as described in paragraph (c) of this section;

(iv) An indication whether the identifiable event was a discharge of indebtedness in a bankruptcy, if known; and

(v) Any other information required by Form 1099-C or its instructions, or current revenue procedures.

(2) *No aggregation.* For purposes of reporting under this section, multiple discharges of indebtedness of less than \$600 are not required to be aggregated unless such separate discharges are pursuant to a plan to evade the reporting requirements of this section.

(3) *Amounts not includible in income.* Except as otherwise provided in this section, discharged indebtedness must be reported regardless of whether the debtor is subject to tax on the discharged debt under sections 61 and 108 or otherwise by applicable law.

(4) *Time and place for reporting*—(i) *In general.* Except as provided in paragraph (a)(4)(ii) of this section, returns required by this section must be filed with the Internal Revenue Service office designated in the instructions for Form 1099-C on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the identifiable event occurs.

(ii) *Indebtedness discharged in bankruptcy.* Indebtedness discharged in bankruptcy that is required to be reported under this section must be reported for the later of the calendar year in which the amount of discharged indebtedness first becomes ascertainable, or the calendar year in which the identifiable event occurs.

(b) *Date of discharge*—(1) *In general.* Solely for purposes of this section, except as provided in paragraph (b)(3) of

this section, indebtedness is discharged on the date of the occurrence of an identifiable event specified in paragraph (b)(2) of this section.

(2) *Identifiable events*—(i) *In general.* An identifiable event is—

(A) A discharge of indebtedness under title 11 of the United States Code (bankruptcy);

(B) A cancellation or extinguishment of an indebtedness that renders a debt unenforceable in a receivership, foreclosure, or similar proceeding in a federal or State court, as described in section 368(a)(3)(A)(ii) (other than a discharge described in paragraph (b)(2)(i)(A) of this section);

(C) A cancellation or extinguishment of an indebtedness upon the expiration of the statute of limitations for collection of an indebtedness, subject to the limitations described in paragraph (b)(2)(ii) of this section, or upon the expiration of a statutory period for filing a claim or commencing a deficiency judgment proceeding;

(D) A cancellation or extinguishment of an indebtedness pursuant to an election of foreclosure remedies by a creditor that statutorily extinguishes or bars the creditor's right to pursue collection of the indebtedness;

(E) A cancellation or extinguishment of an indebtedness that renders a debt unenforceable pursuant to a probate or similar proceeding;

(F) A discharge of indebtedness pursuant to an agreement between an applicable financial entity and a debtor to discharge indebtedness at less than full consideration;

(G) A discharge of indebtedness pursuant to a decision by the creditor, or the application of a defined policy of the creditor, to discontinue collection activity and discharge debt; or

(H) The expiration of the non-payment testing period, as described in paragraph (b)(2)(iv) of this section.

(ii) *Statute of limitations.* In the case of an expiration of the statute of limitations for collection of an indebtedness, an identifiable event occurs under paragraph (b)(2)(i)(C) of this section only if, and at such time as, a debtor's affirmative statute of limitations defense is upheld in a final judgment or decision of a judicial proceeding, and

the period for appealing the judgment or decision has expired.

(iii) *Decision to discontinue collection activity; creditor's defined policy.* For purposes of the identifiable event described in paragraph (b)(2)(i)(G) of this section, a creditor's defined policy includes both a written policy of the creditor and the creditor's established business practice. Thus, for example, a creditor's established practice to discontinue collection activity and abandon debts upon expiration of a particular non-payment period is considered a defined policy for purposes of paragraph (b)(2)(i)(G) of this section.

(iv) *Expiration of non-payment testing period.* There is a rebuttable presumption that an identifiable event under paragraph (b)(2)(i)(H) of this section has occurred during a calendar year if a creditor has not received a payment on an indebtedness at any time during a testing period (as defined in this paragraph (b)(2)(iv)) ending at the close of the year. The testing period is a 36-month period increased by the number of calendar months during all or part of which the creditor was precluded from engaging in collection activity by a stay in bankruptcy or similar bar under state or local law. The presumption that an identifiable event has occurred may be rebutted by the creditor if the creditor (or a third-party collection agency on behalf of the creditor) has engaged in significant, bona fide collection activity at any time during the 12-month period ending at the close of the calendar year, or if facts and circumstances existing as of January 31 of the calendar year following expiration of the 36-month period indicate that the indebtedness has not been discharged. For purposes of this paragraph (b)(2)(iv)—

(A) Significant, bona fide collection activity does not include merely nominal or ministerial collection action, such as an automated mailing;

(B) Facts and circumstances indicating that an indebtedness has not been discharged include the existence of a lien relating to the indebtedness against the debtor (to the extent of the value of the security), or the sale or packaging for sale of the indebtedness by the creditor; and

(C) In no event will an identifiable event described in paragraph (b)(2)(i)(H) of this section occur prior to December 31, 1997.

(3) *Permitted reporting.* If a discharge of indebtedness occurs before the date on which an identifiable event occurs, the discharge may, at the creditor's discretion, be reported under this section.

(c) *Indebtedness.* For purposes of this section, indebtedness means any amount owed to an applicable financial entity, including stated principal, fees, stated interest, penalties, administrative costs and fines. The amount of indebtedness discharged may represent all, or only a part, of the total amount owed to the applicable financial entity.

(d) *Exceptions from reporting requirement—(1) Certain bankruptcy discharges—(i) In general.* Reporting is required under this section in the case of a discharge of indebtedness in bankruptcy only if the creditor knows from information included in the reporting entity's books and records pertaining to the indebtedness that the debt was incurred for business or investment purposes as defined in paragraph (d)(1)(ii) of this section.

(ii) *Business or investment debt.* Indebtedness is considered incurred for business purposes if it is incurred in connection with the conduct of any trade or business other than the trade or business of performing services as an employee. Indebtedness is considered incurred for investment purposes if it is incurred to purchase property held for investment, as defined in section 163(d)(5).

(2) *Interest.* The discharge of an amount of indebtedness that is interest is not required to be reported under this section.

(3) *Non-principal amounts in lending transactions.* In the case of a lending transaction, the discharge of an amount other than stated principal is not required to be reported under this section. For this purpose, a lending transaction is any transaction in which a lender loans money to, or makes advances on behalf of, a borrower (including revolving credits and lines of credit).

(4) *Indebtedness of foreign debtors held by foreign branches of U.S. financial in-*

stitutions—(i) Reporting requirements. [Reserved]

(ii) *Definition.* An indebtedness held by a foreign branch of a U.S. financial institution is described in this paragraph (d)(4) only if—

(A) The financial institution is engaged through a branch or office in the active conduct of a banking or similar business outside the United States;

(B) The branch or office is a permanent place of business that is regularly maintained, occupied, and used to carry on a banking or similar financial business;

(C) The business is conducted by at least one employee of the branch or office who is regularly in attendance at such place of business during normal working hours;

(D) The indebtedness is extended outside of the United States by the branch or office in connection with that trade or business; and

(E) The financial institution does not know or have reason to know that the debtor is a United States person.

(5) *Acquisition of indebtedness by related party.* No reporting is required under this section in the case of a deemed discharge of indebtedness under section 108(e)(4) (relating to the acquisition of an indebtedness by a person related to the debtor), unless the disposition of the indebtedness by the creditor was made with a view to avoiding the reporting requirements of this section.

(6) *Releases.* The release of a co-obligor is not required to be reported under this section if the remaining debtors remain liable for the full amount of any unpaid indebtedness.

(7) *Guarantors and sureties.* Solely for purposes of the reporting requirements of this section, a guarantor is not a debtor. Thus, in the case of guaranteed indebtedness, reporting under this section is not required with respect to a guarantor, whether or not there has been a default and demand for payment made upon the guarantor.

(e) *Additional rules—(1) Multiple debtors—(i) In general.* In the case of indebtedness of \$10,000 or more incurred on or after January 1, 1995, that involves more than one debtor, a reporting entity is subject to the requirements of paragraph (a) of this section

for each debtor discharged from such indebtedness. In the case of indebtedness incurred prior to January 1, 1995, and indebtedness of less than \$10,000 incurred on or after January 1, 1995, involving multiple debtors, reporting under this section is required only with respect to the primary (or first-named) debtor. Additionally, only one return of information is required under this section if the reporting entity knows, or has reason to know, that co-obligors were husband and wife living at the same address when an indebtedness was incurred, and does not know or have reason to know that such circumstances have changed at the date of a discharge of the indebtedness. This paragraph (e)(1) applies to discharges of indebtedness after December 31, 1994.

(ii) *Amount to be reported.* In the case of multiple debtors jointly and severally liable on an indebtedness, the amount of discharged indebtedness required to be reported under this section with respect to each debtor is the total amount of indebtedness discharged. For this purpose, multiple debtors are presumed to be jointly and severally liable on an indebtedness in the absence of clear and convincing evidence to the contrary.

(2) *Multiple creditors*—(i) *In general.* Except as otherwise provided in this paragraph (e)(2), if indebtedness is owned (or treated as owned for federal income tax purposes) by more than one creditor, each creditor that is an applicable financial entity must comply with the reporting requirements of this section with respect to any discharge of indebtedness of \$600 or more allocable to such creditor. A creditor will be considered to have complied with the requirements of this section if a lead bank, fund administrator, or other designee of the creditor complies on its behalf in any reasonable manner, such as by filing a single return reporting the aggregate amount of indebtedness discharged, or by filing a return with respect to the portion of the discharged indebtedness allocable to the creditor. For purposes of this paragraph (e)(2)(i), any reasonable method may be used to determine the portion of discharged indebtedness allocable to each creditor.

(ii) *Partnerships.* For purposes of paragraph (e)(2)(i) of this section, in-

debtedness owned by a partnership is treated as owned by the partners.

(iii) *Pass-through securitized indebtedness arrangement*—(A) *Reporting requirements.* [Reserved]

(B) *Definition.* For purposes of this paragraph (e)(2)(iii), a pass-through securitized indebtedness arrangement is any arrangement whereby one or more debt obligations are pooled and held for twenty or more persons whose interests in the debt obligations are undivided co-ownership interests that are freely transferrable. Co-ownership interests that are actively traded personal property (as defined in § 1.1092(d)-1) are presumed to be freely transferrable and held by twenty or more persons.

(iv) *REMICs.* [Reserved]

(3) *Coordination with reporting under section 6050J.* If, in the same calendar year, a discharge of indebtedness reportable under section 6050P occurs in connection with a transaction also reportable under section 6050J (relating to foreclosures and abandonments of secured property), an applicable financial entity need not file both a Form 1099-A and a Form 1099-C with respect to the same debtor. The filing requirements of section 6050J will be satisfied with respect to a borrower if, in lieu of filing Form 1099-A, a Form 1099-C is filed in accordance with the instructions for the filing of that form. This paragraph (e)(3) applies to discharges of indebtedness after December 31, 1994.

(4) *Direct or indirect subsidiary.* For purposes of section 6050P(c)(1)(C), the term direct or indirect subsidiary means a corporation in a chain of corporations beginning with an entity described in section 6050P(c)(1)(A), if at least 50 percent of the total combined voting power of all classes of stock entitled to vote, or at least 50 percent of the total value of all classes of stock, of such corporation is directly owned by the entity described in section 6050P(c)(1)(A), or by one or more other corporations in the chain.

(5) *Use of magnetic media.* Any return required under this section must be filed on magnetic media to the extent required by section 6011(e) and the regulations thereunder. A failure to file on magnetic media when required constitutes a failure to file an information

return under section 6721. Any person not required by section 6011(e) to file returns on magnetic media may request permission to do so under applicable regulations and revenue procedures.

(6) *TIN solicitation requirement*—(i) *In general.* For purposes of reporting under this section, a reasonable effort must be made to obtain the correct name/taxpayer identification number (TIN) combination of a person whose indebtedness is discharged. A TIN obtained at the time an indebtedness is incurred satisfies the requirement of this section, unless the entity required to file knows that such TIN is incorrect. If the TIN is not obtained prior to the occurrence of an identifiable event, it must be requested of the debtor for purposes of satisfying the requirement of this paragraph (e)(6).

(ii) *Manner of soliciting TIN.* Solicitations made in the manner described in § 301.6724-1(e)(1)(i) and (2) of this chapter will be deemed to have satisfied the reasonable effort requirement set forth in paragraph (e)(6)(i) of this section. A TIN solicitation made after the occurrence of an identifiable event must clearly notify the debtor that the Internal Revenue Service requires the debtor to furnish its TIN, and that failure to furnish such TIN may subject the debtor to a \$50 penalty imposed by the Internal Revenue Service. A TIN provided under this section is not required to be certified under penalties of perjury.

(7) *Recordkeeping requirements.* Any applicable financial entity required to file a return with the Internal Revenue Service under this section must also retain a copy of the return, or have the ability to reconstruct the data required to be included on the return under paragraph (a)(1) of this section, for at least four years from the date such return is required to be filed under paragraph (a)(4) of this section.

(8) *No multiple reporting.* If discharged indebtedness is reported under this section, no further reporting under this section is required for the amount so reported, notwithstanding that a subsequent identifiable event occurs with respect to the same amount. Further, no additional reporting or Form 1099-C correction is required if a creditor re-

ceives a payment of all or a portion of a discharged indebtedness reported under this section for a prior calendar year.

(f) *Requirement to furnish statement*—(1) *In general.* Any applicable financial entity required to file a return under this section must furnish to each person whose name is shown on such return a written statement that includes the following information—

(i) The information required by paragraph (a)(1) of this section;

(ii) The name, address, and TIN of the applicable financial entity required to file a return under paragraph (a) of this section;

(iii) A legend identifying the statement as important tax information that is being furnished to the Internal Revenue Service; and

(iv) Any other information required by Form 1099-C or its instructions, or current revenue procedures.

(2) *Furnishing copy of Form 1099-C.* The requirement to provide a statement to the debtor will be satisfied if the applicable financial entity furnishes copy B of the Form 1099-C or a substitute statement that complies with the requirements of the current revenue procedure for substitute Forms 1099.

(3) *Time and place for furnishing statement.* The statement required by this paragraph (f) must be furnished to the debtor on or before January 31 of the year following the calendar year in which the identifiable event occurs. The statement will be considered furnished to the debtor if it is mailed to the debtor's last known address.

(g) *Penalties.* For penalties for failure to comply with the requirements of this section, see sections 6721 through 6724.

(h) *Effective dates*—(1) *In general.* The rules in this section apply to discharges of indebtedness after December 21, 1996, except paragraphs (e)(1) and (e)(3) of this section, which apply to discharges of indebtedness after December 31, 1994.

(2) *Earlier application.* Notwithstanding the provisions of paragraph (h)(1) of this section, an applicable financial entity may, at its discretion, apply any of the provisions of this section to any discharge of indebtedness

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occurring on or after January 1, 1996, and before December 22, 1996.

[T.D. 8654, 61 FR 268, Jan. 4, 1996, as amended by T.D. 8895, 65 FR 50408, Aug. 18, 2000]

§ 1.6050S-1T Information reporting for payments and reimbursements or refunds of qualified tuition and related expenses (temporary).

(a) *Electronic furnishing of statements*—(1) *In general.* A person required by section 6050S(d) to furnish a written statement (furnisher) to the individual to whom it is required to be furnished (recipient) may furnish the statement in an electronic format in lieu of a paper format. A furnisher who meets the requirements of paragraphs (a)(2) through (7) of this section is treated as furnishing the statement in a timely manner.

(2) *Consent*—(i) *In general.* The recipient must have affirmatively consented to receive the statement in an electronic format and must not have withdrawn that consent before the statement is furnished. The consent must be made electronically in a manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a different manner (for example, in an e-mail or in a paper document) if it is confirmed electronically in the manner described in the preceding sentence.

(ii) *Change in hardware or software requirements.* If a change in the hardware or software required to access the statement creates a material risk that the recipient will not be able to access the statement, the furnisher must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the statement and inform the recipient that a new consent to receive the statement in the revised electronic format must be provided to the furnisher. After implementing the revised hardware and software, the furnisher must obtain from the recipient, in the manner described in paragraph (a)(2)(i) of this section, a new consent or confirmation of consent to receive the statement electronically.

(iii) *Example.* The following example illustrates the rules of this paragraph (a)(2):

Example. Furnisher F sends Recipient R an e-mail stating that R may consent to receive statements required by section 6050S(d) electronically on a website instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive the statements electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished statements. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

(3) *Required disclosures*—(i) *In general.* Prior to, or at the time of, a recipient's consent, the furnisher must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (a)(3)(ii) through (viii) of this section.

(ii) *Paper statement.* The recipient must be informed that the statement will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) *Scope and duration of consent.* The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to statements furnished every year after the consent is given until it is withdrawn in the manner described in paragraph (a)(3)(v)(A) of this section or only to the statement required to be furnished on or before the January 31 immediately following the date on which the consent is given.

(iv) *Post-consent request for a paper statement.* The recipient must be informed of any procedure for obtaining a paper copy of the recipient's statement after giving the consent described in paragraph (a)(2)(i) of this section.

(v) *Withdrawal of consent.* The recipient must be informed that—

(A) The recipient may withdraw a consent at any time by furnishing the withdrawal in writing (electronically or on paper) to the person whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement;